

**GENERAL TERMS AND CONDITIONS
AMERICAN RECOVERY AND
REINVESTMENT ACT OF 2009, Pub. L 111-5,
(Recovery Act or Act)
FOR COMMERCIAL PURCHASES**

**SAVANNAH RIVER NUCLEAR SOLUTIONS,
LLC
SAVANNAH RIVER SITE
AIKEN, SC 29808**

**Change Bar indicates new article, a change in
application, or that text of Article has changed.**

APPLICABLE TO ALL TRANSACTIONS

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- (1) Equal Opportunity *(This Clause is applicable if Order exceeds \$10,000)*
- (2) Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans *(This Clause is applicable if Order exceeds \$25,000)*
- (3) Affirmative Action for Workers with Disabilities *(This Clause is applicable if Order exceeds \$10,000)*
- (4) Nuclear Hazards Indemnity Agreement
- (5) Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201) *(This Clause is applicable if Order exceeds \$100,000)*

1. DEFINITIONS

The following terms shall have the meanings below:

- A. Government means the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative thereof.
- B. Company means Savannah River Nuclear Solutions, LLC (SRNS), under its prime contract with DOE. SRNS may also be referred to herein as the "Licensee"
- C. Seller means the person or organization that has entered into this Agreement/Subcontract. Seller may also be referred to herein as "Licensor"
- D. Item includes "commercial item", "commercial component", and "service" as defined in FAR 2.101.
- E. "Software" means the specified software and/or source code licensed by the Licensor to the Licensee under this Agreement/Subcontract.
- F. "Covered Funds" means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the contract and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.
- G. "Non-Federal Employer" means any employer with respect to Covered Funds – the contractor or subcontractor, as the case may be, if the contractor or subcontractor is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving Covered Funds; or with respect to Covered Funds

received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

- H. "First-tier Subcontract" means a subcontract awarded directly by a Federal government prime contractor funded by the Recovery Act.
- I. "Jobs Created" means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the American Recovery and Reinvestment Act (ARRA). This definition covers only positions established in the United States and outlying areas (see definition in FAR 2.101.) The number shall be expressed as "full-time equivalent" which shall include full-time, part-time, temporary, permanent, positions as expressed as a "person-year," consistent with the contractor's existing personnel procedures. This includes positions at the prime level, and the prime contractor's estimate of positions at the first subcontract tier.
- J. "Jobs retained" means an estimate of those previously existing unfilled positions that are filled as a result of funding by the American Recovery and Reinvestment Act (ARRA)- jobs that would have been eliminated but were retained or saved because of funding provided by the Recovery Act. This definition covers only positions established in the United States and outlying areas (see definition in FAR 2.101.) The number shall be expressed as "full-time equivalent" which shall include full-time, part-time, temporary, permanent, positions as expressed as a "person-year," consistent with the contractor's existing personnel procedures. This includes positions at the prime level, and the prime contractor's estimate of positions at the first subcontract tier.
- K. "Total Compensation" means the complete pay package of subcontractor employees, including all forms of money, benefits, services, and in-kind payments, consistent with the regulations of the Securities and Exchanges Commission at 17 CCR 229.402.

2. RESOLUTION OF DISPUTES

- A. Seller shall not be entitled to and neither the Company nor the Government shall be liable to the Seller or its lower-tier suppliers or subcontractors for damages in tort (including negligence), or contract, or otherwise, except as

specifically provided in this Agreement/Subcontract.

- B. The Seller and the Company agree to make good-faith efforts to settle any dispute or claim that arises under this Agreement/Subcontract through discussion and negotiation. If such efforts fail to result in a mutually agreeable resolution, the parties shall consider the use of Alternative Disputes Resolution (ADR). In the event non-binding mediation or arbitration is agreed upon, the site of the proceedings shall be Aiken, South Carolina. The mediator or arbitrator shall allocate cost, except that there shall be no pre-decisional interest costs, and each party shall bear its discretionary costs. In the event that ADR fails or is not used, the parties agree that the appropriate forum for resolution shall be as follows:
 - (1) Any litigation shall be brought and prosecuted exclusively in Federal District Court, with venue in the United States District Court for the District of South Carolina, Aiken Division
 - (2) Provided, however, that in the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in State Court in Aiken County, South Carolina.
- C. The parties agree that substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with the laws of the State of South Carolina.
- D. There shall be no interruption in the prosecution of the work, and the Seller shall proceed diligently with the performance of this Agreement/Subcontract pending final resolution of any dispute arising under this Agreement/Subcontract between the parties hereto or between the Seller, and its subtier Agreement/Subcontracts.

3. ORDER OF PRECEDENCE

- A. Any inconsistencies shall be resolved in accordance with the following descending order of precedence:
 - (1) Face of the Agreement/Subcontract
 - (2) Special terms and conditions
 - (3) Item description
 - (4) General terms and conditions
- B. Wherever references are made in this Order to standards or codes in accordance with which the Work under this Order is to be performed, the edition or revision of the standards or codes current on the effective date of this Order shall apply unless otherwise expressly stated in the

specifications and drawings. In case of conflict between any reference standards and codes and any Order Document, the latter shall govern.

- C. Supplier shall perform all Work pursuant to this Order as an independent contractor. If any part of the Work is subcontracted, Supplier is responsible for having that subcontracted Work comply with the terms of this Order. No act or order of SRNS shall be deemed to be an exercise of supervision or control of performance hereunder. No provision of this Order and no action taken by SRNS under this Order shall be construed to make or constitute SRNS the employer or joint employer of any of the employees of Supplier or any Subcontractor.

4. ADMINISTRATION AND ASSIGNMENT

The Company shall make payments under this Agreement/Subcontract from funds advanced by the Government and agreed to be advanced by DOE, and not from its own assets. This Agreement/Subcontract may be assigned by the Company to DOE or its designee, and in case of such transfer and notice thereof to the Seller, the Company shall have no further responsibilities hereunder. The Seller shall not assign rights or obligations to third parties without the prior written consent of the Company. However, the Seller may assign rights to be paid amounts due or to become due to a financing institution if the Company is promptly furnished written notice and a signed copy of such assignment. Payments to an assignee shall be subject to set off or recoupment for any present or future claims of the Company against the Seller.

5. ACCEPTANCE OF TERMS AND CONDITIONS

- A. Seller, by signing this Agreement/Subcontract or delivering the items identified herein, agrees to comply with all the terms and conditions and all specifications and other documents that this Agreement/Subcontract incorporated by reference or attachment. The Company hereby objects to any terms and conditions contained in any acknowledgment of this Agreement/Subcontract that are different from or in addition to those mentioned in this document. Failure of the Company to enforce any of the provisions of this Agreement/Subcontract shall not be construed as evidence to interpret the requirements of this Agreement/Subcontract, nor a waiver of any requirement, nor of the right of the Company to enforce each and every provision. All rights and obligations shall survive final performance of this Agreement/Subcontract.

- B. When the use of a Subtier Supplier(s) is deemed necessary, the Prime Supplier is responsible to flow down those Technical and Quality requirements deemed applicable for the activities within its defined scope of work, in accordance with referenced Codes/Standards/Material Specifications, or other requirements identified within the procurement documents included with this Purchase Order/Subcontract package. The Prime Supplier is furthermore responsible to flow down all commercial Terms and Conditions, including articles incorporated by reference, to all Subtier suppliers, which includes verification that the Subtier Supplier has been appropriately qualified to perform the activities required to satisfy this procurement. The Prime Supplier must maintain objective evidence of the successful flow down of the referenced requirements and provide such evidence to SRNS upon request. This flow down is also required at all levels if the Subtier Supplier to the Prime Supplier deems it necessary to further subcontract its parts of this SRNS contract.
- C. When NQA-1 is invoked as the governing standard, the Prime Supplier and applicable Subtier Supplier(s) shall be required to meet the Part 1 Basic Requirements (Section 100). Additional Sections of NQA-1 Part 1, (Sections 200 and above), and NQA-1 Part II, may be invoked at the discretion of SRNS via the procurement documents, and if invoked, must be flowed down from the Prime Supplier to its applicable Subtier Supplier(s) at all levels. If the Prime Supplier or its Subtier Supplier(s) intends to upgrade materials by way of a Commercial Grade Dedication Process, SRNS must be notified of this intent and the Supplier's process verified and approved prior to dedicating any material associated with an SRNS procurement.
- D. The SRNS Buyer is to be notified in writing, within five working days of any changes within your company as identified below:

- (1) Key quality personnel to include as a minimum:
 - i. Quality Assurance/Quality Control Manager
 - ii. - Assistant Quality Assurance/Quality Control Manager
 - iii. - Other critical Quality Assurance/Quality Control personnel
- (2) Quality Assurance Program Revisions
- (3) Company ownership transfers/buy-outs, and
- (4) All identified Nonconformance or Corrective Action Reports associated with SRNS contracts including those issued concerning Subtier Suppliers.

6. **WARRANTY**

- A. Seller warrants that items delivered under this Agreement/Subcontract shall be in accordance with Seller's affirmation, description, sample, or model and compliant with all requirements of this Agreement/Subcontract. The warranty shall begin upon receipt of conforming items and extend for a period of (1) the manufacturer's warranty period or six months, whichever is longer, if the Seller is not the manufacturer and has not modified the item or (2) one year or the manufacturer's warranty period, whichever is longer, if the Seller is the manufacturer of the item or has modified it. If any nonconformity with item appears within that time, Seller shall promptly repair or replace such items or re-perform services at Seller's election. Transportation of replacement items and return of nonconforming items and repeat performance of services shall be at Seller's expense. Company shall notify Seller of such nonconformity within a reasonable time after discovery, and Seller shall notify Company of whether it chooses to make repairs or replacements within three (3) working days after Company's notice of nonconformity. If repair or replacement or re-performance of services is not timely, Company may elect to return the nonconforming items or repair or replace them or re-procure the services at Seller's expense.
- B. Latent Defects. In the event the Seller becomes aware of any latent defect(s) in any item(s) furnished under this Agreement/Subcontract, the Seller shall promptly notify the Company Procurement Representative. This notice shall provide at a minimum the following information:
 - (1) full description of the item(s);
 - (2) manufacturer, model and/or part number;
 - (3) complete description of the latent defect;
 - (4) impact of the defect on the operation of the item(s);

- (5) action(s) to be taken by the Company relative to return, re-fit, repair, etc.;
- (6) date of purchase by the Company; and,
- (7) applicable Company Agreement-Subcontract number.

- C. In the case of software furnished under this Agreement/Subcontract, Licensor of such software warrants for a period of one (1) year following the date of this agreement/subcontract that the Software is free of defects and is fit for the purposes intended by SRNS and the Licensor shall provide SRNS with correction of errors found in the original software. Such corrections shall be provided at no cost to the Licensee. If Licensor is called upon by SRNS to undertake error exploration or correction, and such error is found to be caused by SRNS supplied data, modification of Software by SRNS, compiler or operating system characteristics, or any other cause not inherent in the original Software, Licensor may submit a proposal for adjustment in the order price for such services at the Licensor's standard rate then in effect.

7. **NEW MATERIALS**

Unless otherwise specified in this Agreement/Subcontract, all items delivered shall consist of new materials. New is defined as previously unused which may include residual inventory or unused former Government surplus property

8. **SUSPECT/COUNTERFEIT PARTS**

- A. Supplier's shall supply products at Savannah River Site that are not and do not contain suspect/counterfeit parts. A suspect item is an item in which there is an indication by visual inspection, testing, or other information that it may not conform to established government or industry accepted specifications or national consensus standards. A suspect/counterfeit item is any item that is a copy or substitute without legal right or authority to do so, or one whose material, performance, characteristics or identity does not appear to be authentic and is verified to be either counterfeit or fraudulent. Failure by the supplier to document material substitution or identify that an item has been refurbished or remanufactured is considered to be fraud, and the item then becomes suspect/counterfeit.
- B. If it is determined that a suspect/counterfeit part has been supplied, SRNS will impound the items pending a decision on disposition. The Supplier may be required to replace such items with items acceptable to SRNS and shall be liable for all costs relating to the impoundment, removal, and

replacement. SRNS may also notify the local Department of Energy Office of Inspector General and reserves the right to withhold payment for the items pending results of the investigation.

9. TITLE AND RISK OF LOSS

A. Unless otherwise provided in the Agreement/Subcontract, title to the items purchased under this Agreement/Subcontract shall pass directly to the Government upon, and the risk of loss or damage to the items shall remain with the Seller until and shall pass to the Company upon:

(1) If F.O.B. Shipping point Completion of delivery to the carrier and any loading by the Seller.

(2) If F.O.B. Destination: Completion of delivery or commencement of unloading by the Company at the delivery point.

B. However; (1) if the Purchase Order provides for formal acceptance of any items by the Company, then title to such items shall pass directly to the Government upon such formal acceptance; and (2) the title and risk of loss or damage to items that are nonconforming shall remain with the Seller until acceptance of the items by the Company as conforming.

10. PAYMENT

A. Unless otherwise provided, terms of payment shall be net 30 days from the latter of (1) receipt of Seller's proper invoice, if required, or (2) delivery of items/completion of work. Any offered discount shall be taken if payment is made within the discount period that the Seller indicates. Credit and discount periods shall be computed from the date such invoice is so payable to the date SRNS's check is mailed or, for Electronic Funds Transfer (EFT), the specified payment date. Notwithstanding anything herein, SRNS shall be entitled at any and all times to set off against any amounts payable at any time by SRNS hereunder any amount owing from Seller to SRNS under this Order or other orders with Seller.

B. Overpayments. If Seller becomes aware of a duplicate invoice payment or that SRNS has otherwise overpaid on an invoice payment, the Seller shall immediately notify SRNS and request instructions for disposition of the overpayment.

11. PAYMENT BY ELECTRONIC FUNDS TRANSFER

A. Methods of Payment:

(1) All payments by SRNS under this Order shall be made by Electronic Funds Transfer (EFT) except as provided in Paragraph A.2 of this Provision. As used in this provision, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event SRNS is unable to release one or more payments by EFT, Supplier agrees to either:

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request SRNS to extend payment due dates until such time as SRNS makes payment by EFT.

B. Mandatory Submission of Supplier's EFT Information

Supplier is required to provide SRNS with the information required to make payment by EFT. Supplier shall provide this information directly to the office designated in this Order, on forms provided by SRNS, no later than 15 days after award. If not otherwise specified in this Order, the payment office is the designated office for receipt of Supplier's EFT information. In the event that the EFT information changes, Supplier shall be responsible for providing the updated information to the designated office.

C. Mechanisms for EFT Payment

SRNS may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System.

D. Suspension of Payment

(1) SRNS is not required to make any payment under this Order until after receipt, by the designated office, of the correct EFT payment information from Supplier. Until receipt of the correct EFT information, any invoice or subcontract financing request shall be deemed not to be a proper invoice for the purpose of payment under this Order.

(2) If the EFT information changes after submission of correct EFT information, SRNS shall begin using the changed EFT information no later than 30 days after its receipt by the designated office. However, Supplier may request that no further payments be made until the updated EFT information is implemented by the payment office.

E. Payment Information

On the day payment on Supplier's invoice is due, SRNS will issue instructions to its bank to

transfer payment to Supplier, and will also send a FAX to Supplier explaining the details to support the payment.

F. Liability for Uncompleted or Erroneous Transfers.

(1) If an uncompleted or erroneous transfer occurs because SRNS used the Supplier's EFT information incorrectly, SRNS remains responsible for --

(i) Making a correct payment; and

(ii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because Supplier's EFT information was incorrect, or was revised within 30 days of SRNS release of the EFT payment transaction instructions to the bank, and;

(i) If the funds are no longer under the control of the payment office, SRNS is deemed to have made payment and the Supplier is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, SRNS shall not make payment and the provisions of paragraph D shall apply.

12. TAX WITHHOLDING FOR NONRESIDENTS

A. Withholdings required by section 12-8-550 do not apply to payments on orders for tangible personal property when those payments are not accompanied by services to be performed within the state of South Carolina.

B. Under Title 12 of the Code of Laws of South Carolina, section 12-8-550, two (2) percent of each and every payment made to Suppliers and Subcontractors who are nonresidents of the State of South Carolina and are conducting a business or performing personal services of a temporary nature carried on within South Carolina must be withheld and forwarded to the South Carolina Tax Commission in cases where an order or a subcontract exceeds or could reasonably be expected to exceed ten thousand dollars (\$10,000.00) SRNS will withhold as required by law.

C. Under Title 12 of the Code of Laws of South Carolina, section 12-8-540, seven (7) percent (five (5) percent for corporations) of each and every payment of rentals or royalties to subcontractors who are nonresidents of the State of South Carolina must be withheld and forwarded to the South Carolina Tax Commission in cases where the payments amount to twelve hundred dollars (\$1,200.00) or

more a year. SRNS will withhold as required by law.

D. The above withholdings will not be made provided the Supplier presents the affidavit of registration with the South Carolina Department of Revenue or the South Carolina Secretary of State's Office, or proof of having posted the appropriate bond with the South Carolina Tax Commission.

13. COMPLIANCE WITH LAWS

A. Seller shall comply with all applicable federal, state, and local laws and ordinances and all pertinent lawful orders, rules, and regulations, including new provisions of 10 CFR 851 relating to Health and Safety. Compliance shall be a material requirement of this Agreement/Subcontract.

B. Seller - Staff Augmentation Services

(Paragraphs B – H applies to Staff Augmentation Services)

Sellers shall comply with all applicable federal, state, and local laws and ordinances and all pertinent lawful orders, rules, and regulations, including provisions of 10 CFR 851. Compliance shall be a material requirement of this Agreement/Subcontract. Except as otherwise directed by SRNS, Seller shall procure without additional expense to SRNS, all necessary permits or licenses. DEAR Clause 970.5223-1 Integration of Environment, Safety, and Health into Work Planning and Execution (DEC 2000) is incorporated into the subcontract by reference. Compliance by Seller to SRNS's Worker Safety and Health Program (WSHP) [as implemented by Integrated Safety Management System (ISMS)] shall satisfy the requirements of this DEAR clause and 10 CFR 851.

C. The Seller employees shall take all reasonable precautions in the performance of work under this subcontract to protect the environment, safety and health of themselves, site employees and members of the public. SRNS procedures provide authority to call a time-out/stop work when unsafe conditions are observed and/or employee actions are likely to cause injury to themselves, other personnel, or cause damage to SRS property or the environment. Seller shall ensure that its employees are aware of this authority and understand they have the same authority as SRNS employees to call a time-out/stop work while working at SRS. SRNS purchasing representative shall notify the Seller in writing of any

noncompliance with the provisions of this article and corrective action to be taken.

D. Upon assignment, SRNS will be responsible to provide Staff Augmentation employee's with a physical and in addition SRNS will be responsible for an Exit Physical. Staff Augmentation employees must complete a Standard Occupational Medical Physical Exam. All diagnostic /monitoring exams and return to work (after an absence of 24 work hours) exams are to be provided through the Seller.

E. Medical results will be provided to the staff augmentation employees.

F. The on-site Medical Surveillance program will be provided by SRNS Medical based on the work scope hazards. The Seller's corporate occupational medicine program must be in compliance with all other 10 CFR 851 requirements.

G. Site Reporting Requirements

The Seller (staff augmentation) personnel shall immediately notify the STR or the SRNS Procurement Representative of any event or condition that may require reporting to DOE. Further, the Seller shall cooperate with any SRNS or DOE critique, analysis, or investigation and complete necessary reports for such events/conditions. Events/conditions that require reporting to DOE are defined in DOE Manual 231.1-2 and can include, but not limited to:

- (1) Operational emergencies,
- (2) Occupational injury or illness (including exposures to hazardous substances in excess of allowable limits) and near misses,
- (3) Any on-the-job injury where an Seller employee is taken offsite for something other than observation. The notification requirement applies to any person who goes offsite for prompt medical treatment of any type. The mode of transportation (ambulance, personal vehicle, etc.) is not pertinent – any offsite transfers must be reported immediately,
- (4) Any violation of Lockout/Tagout controls where there are no credible barriers left between the worker, and the energy source regardless of whether or not there was an injury,
- (5) Fires/explosions,
- (6) Hazardous energy control failures,
- (7) Operations shutdown directed by management for safety reasons,

(8) Environmental release of radioactive materials, hazardous substances, regulated pollutants, oil spills, etc.,

(9) Violation of Federal Motor Carrier Safety Regulations or Hazardous Material Regulations,

(10) Loss damage, theft, or destruction to government property (including damage to ecological resources like wetlands, critical habitats, historical/archeological sites, etc.),

(11) Spread of radioactive contamination or loss of control of radioactive materials,

(12) Personnel radioactive contamination's or exposures, and

(13) Violations of procedures.

H. Immediate notification is required of such events to ensure SRNS meets its commitment for 30 minute notification to appropriate DOE authorities. The Seller employee shall preserve conditions surrounding or associated with the event for continued investigation unless such actions interfere with establishing a safe condition. The Seller's employees shall not conceal nor destroy any information concerning noncompliance or potential noncompliance with the environment, safety and health requirements of this subcontract.

14. TERMINATION FOR CONVENIENCE

The Company may, in its sole discretion, terminate the Agreement/Subcontract, or may terminate the fabrication of all or any portion of the items not then completed, at any time, by giving the Seller a written notice of termination. Upon receipt of a notice of termination, the Seller shall, unless the notice requires otherwise, discontinue all performance on the date and to the extent specified in the notice, and shall otherwise minimize costs to the Company. Payment for items already completed or in the process of completion, shall be adjusted between the Seller and the Company in a fair and reasonable manner, but such payment shall exclude any allowance for the uncompleted portion of the items, or any anticipated profits thereon. Such payment for items already completed or in the process of completion shall be the total compensation due to the Seller for termination at will by the Company. If this is an order for Software, SRNS shall pay to Licensor any fees due under the terms of this Order licensed up to the date of termination, but shall have no further liability.

15. TERMINATION FOR CAUSE

A. The Company may terminate this Agreement/Subcontract for cause, in whole or in

part, if the Seller fails to comply with any of the terms of this Agreement/Subcontract, or fails to provide adequate assurance of future performance. In that event, the Company shall not be liable for any amount for items not accepted.

- B. If this Agreement/Subcontract is terminated for cause, the Company may require Seller to deliver to the Company any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of this Agreement/Subcontract. The Company shall pay the agreed-upon price for completed items delivered and accepted. The Company and Seller shall agree on the amount of payment for all other deliverables.
- C. Seller shall not be liable to Company for delays in performance occasioned by causes beyond Seller's reasonable control and without its fault or negligence, including but not limited to acts of God or of the public enemy, acts of the government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of Seller's suppliers at any tier. However, the delays of Seller's suppliers at any tier must be proved to be beyond the control of both Seller and its suppliers and without fault or negligence of either
- D. If this Agreement/Subcontract is for Software, as defined herein, either party may, by written notice, terminate this Order, in whole or in part without liability therefore if such other party fails to perform in accordance with any provision hereof; provided, however, that in the event of a termination under this paragraph D, the terminating party shall first have given the other party a written notice specifying the failure complained of and thirty (30) days to cure such failure. In the event of termination of the Order in whole or in part, SRNS will destroy or return to Licensor all affected Software and documentation and all copies thereof.
- E. The rights and remedies of the Company in this clause are in addition to any other rights and remedies provided by law or under this Agreement/Subcontract.

16. BANKRUPTCY

If the Seller enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the Company Agreement/Subcontract Administrator responsible for administering this Agreement/Subcontract within five (5) days of initiation of the proceedings. The notification shall

include the date on which the proceeding was filed, the identity and location of the court and a listing of the Agreement/Subcontract numbers for which final payment has not been made.

17. TAXES

Seller shall not collect an increment for South Carolina sales or use tax from the Company for the items provided under this Agreement/Subcontract beyond such taxes paid by the Seller to its suppliers. The Agreement/Subcontract price includes all applicable federal, state, and local taxes and duties.

18. CHANGES

The Company reserves the right to make changes within the general scope of this Agreement/Subcontract by issuance of a unilateral change order, or by a bilateral modification to this Agreement/Subcontract. Such changes may include, without limitation, changes in (1) the description of the items; (2) the quantities of items ordered; (3) the method of shipment or packaging, and (4) the time or place of delivery, inspection, or acceptance. The Seller shall promptly comply with any such change made by the Company. If any change affects the cost of or the time required for performance, an equitable adjustment to the price and/or delivery requirements and other affected provisions of the Agreement/Subcontract shall be made by the parties in a bilateral modification to this Agreement/Subcontract.

19. SUSPENSION

The Company may, for any reason, direct the Seller to suspend performance of any part of or all of the performance of this Agreement/Subcontract for an indefinite period of time. If any such suspension significantly delays the progress of or causes the Seller additional direct expenses in the performance of the Agreement/Subcontract, not due to the fault or negligence of the Seller, the compensation to the Seller shall be adjusted by a modification to this Agreement/Subcontract on the basis of the additional direct expenses of the Seller to perform the Agreement/Subcontract and the time of performance of the Agreement/Subcontract shall be extended by the actual duration of the suspension. Any claim by the Seller for compensation of a schedule extension must be supported by an appropriate document asserted within ten (10) days from the date an order is given to the Seller to resume the performance of the Agreement/Subcontract.

20. SUPPLIER'S LIABILITY FOR FINES AND PENALTIES

- A. Seller is liable to SRNS for all fines and penalties assessed by any governmental entity against SRNS or DOE as a result of Seller's failure to perform its work under this Agreement/Subcontract in compliance with the requirements of this Agreement/Subcontract.
- B. Seller shall indemnify, defend and hold harmless SRNS and DOE from and against any and all claims, demands, actions, causes of action, suits, damages, expenses, including attorney's fees, and liabilities whatsoever resulting from or arising in any manner on account of the assessment of said fines and penalties against SRNS or DOE.

21. UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)

In the performance of this order, the Supplier is responsible for complying with the following requirements and for flowing down all requirements to lower-tier suppliers.

- A. The Supplier ensures that access to UCNI is provided to only those individuals authorized for routing or special access (see DOE M 471.1-1, Chapter II). Supplier may provide access to material or data containing Unclassified Controlled Nuclear Information (UCNI) utilized in the performance of this Order only to employees who are citizens of the United States.
- B. The Supplier ensures that matter identified as UCNI is protected in accordance with the instructions contained in DOE M 471.1-1, Chapter II. Any material or data containing UCNI which is stored on computer systems must be protected, and the protective measures and/or policies must be specified in a Computer Protection Plan approved by the SRNS Computer Security organization. Adherence to the Plan is required during the performance of this Order.
- C. Material or data containing UCNI shall be disposed of in a manner as described in DOE M 471.1-1, Chapter II. At a minimum, UCNI matter must be destroyed by using strip cut shredders that result in particles of no more than 1/4-inch wide strips. Documents containing UCNI may also be disposed of in the same manner that is authorized for Supplier disposition of other classified material or data. If the above disposal methods are not available to the Supplier, the Supplier may return the UCNI matter to the STR for disposition, with the prior approval of the STR.

- D. The supplier shall report to the SRNS Security Office or the SRNS Purchasing Representative any incidents involving the unauthorized disclosure of UCNI.
- E. If performance of work under this order results in the generation of unclassified documents that contain UCNI, the Supplier shall have a sufficient number of trained UCNI review personnel to ensure the prompt and proper review of generated material or data to provide for the identification, marking, and proper handling of material or data determined to contain UCNI. The suppliers Reviewing Officials shall apply or authorize the application of UCNI markings to any unclassified matter that contains UCNI in accordance with the instructions contained in DOE M 471.1-1, Chapter I, Part C.
- F. If the supplier has a formally designated Classification Officer, the Classification Officer-
 - (1) Serves as a Reviewing Official for information under his/her cognizance;
 - (2) Trains and designates other Reviewing Officials in his/her organization, subordinate organizations, and lower-tier suppliers and maintains a current list of all Reviewing Officials; and
 - (3) May overrule UCNI determinations made by Reviewing Officials under his/her cognizance.
- G. If the supplier has no formally designated Classification Officer, the supplier submits a request for the designation of Reviewing Officials to the local Federal Classification Officer in accordance with the instructions contained in DOE M 471.1-1, Chapter I, Part B.

22. FOREIGN NATIONALS

As used in this Article, the term "Foreign National" is defined to be a person who was born outside the jurisdiction of the United States, is a citizen of a foreign government and has not been naturalized under U.S. law.

- A. The Subcontractor shall obtain the approval of SRNS, in writing, prior to any visit to a DOE or SRNS facility by any Foreign National in connection with work being performed under this Order, in accordance with the requirements of DOE Order 142.3, Unclassified Foreign Visits and Assignments Program. Visits are normally for the purpose of technical discussions, orientation, observation of projects or equipment, training, subcontract service work, including delivery of materials, or for courtesy purposes. The term "visit" also includes officially-sponsored attendance at a DOE or

SRNS event off-site from the DOE/SRNS facility, but does not include off-site events and activities open to the general public. Subcontractors should be aware that required forms and documents necessary for approval of visits by Foreign Nationals should be submitted to the SRNS Purchasing Representative at least four (4) to six (6) weeks prior to the visit, depending on the nationality of the individual and the areas to be visited. Forms can be obtained from the SRNS Purchasing Representative.

- B. In addition, the Subcontractor shall obtain the approval of the SRNS Purchasing Representative, in writing, prior to the employment of, or participation by, any Foreign National in the performance of work under this Subcontract or any lower tier Subcontract at off-site locations. Such approvals will be processed in accordance with the requirements of DOE Order 142.3
- C. In the performance of off-site work, Foreign Nationals only incidentally involved with a SRNS Subcontract, and who have no knowledge that their activities are associated with SRNS Subcontract work, are exempt from the above.

(The following Article applies if employees of Supplier will require physical access to DOE-owned or leased facilities)

23. ACCESS TO DOE-OWNED OR LEASED FACILITIES

- A. The performance of this Order requires that employees of the Supplier have physical access to DOE-owned or leased facilities. The Supplier understands and agrees that DOE has a prescribed process with which the Supplier and its employees must comply in order to receive a security badge that allows such physical access. The Supplier shall propose employees whose background offers the best prospect of obtaining a security badge approval for access. This clause does not control requirements for an employee obtaining a security clearance.
- B. The Supplier shall assure:
 - (1) Compliance with procedures established by DOE and SRNS in providing its employees with any forms directed by DOE or SRNS;
 - (2) Employees properly complete any forms;
 - (3) Employees submit the forms to the person designated by the SRNS Procurement Representative;
 - (4) Employees cooperate with DOE and SRNS officials responsible for granting access to DOE-owned or leased facilities; and

(5) Employees provide additional information requested by those DOE/SRNS officials.

- C. The Supplier understands and agrees that DOE may unilaterally deny a security badge to an employee and that the denial remains effective for that employee unless DOE subsequently determines that access may be granted. Upon notice from DOE or SRNS that an employee's application for a security badge is or will be denied, the Supplier shall promptly identify and submit the appropriate forms for the substitute employee. The denial of a security badge to individual employees by DOE shall not be cause for extension of the period of performance of this Order or any Supplier claim against DOE or SRNS.
- D. The Supplier shall return to the SRNS Procurement Representative, or designee, the badge(s) or other credential(s) provided by DOE pursuant to this clause, granting physical access to DOE-owned or leased facilities by the Supplier's employee(s) upon:
 - (1) Termination of this Order;
 - (2) Expiration of this Order;
 - (3) Termination of employment on this Order by an individual employee; or
 - (4) Demand by DOE/SRNS for return of the badge
- E. The Supplier shall include this clause, including this paragraph E. in any lower-tier Subcontract, awarded in the performance of this Order, in which an employee(s) of the lower-tier Subcontractor will require physical access to DOE-owned or leased facilities

24. BADGING REQUIREMENTS

A. Photo Badge

- (1) Employees may be issued a site access photo badge for a period not to exceed one year. To obtain a Photo Badge, Subcontractor employees and any Lower-tier Subcontractor employees must be processed through SRNS's Subcontract Badging Procedure and are subject to investigation by Governmental authorities. All badges must be returned or accounted for prior to final payment. All employees must be at least 18 years old.
- (2) Subcontractor employees and any Lower-tier Subcontractor employees shall complete Subcontractor Employee Data Sheet and Fingerprint Cards. If a long term badge is required (period greater than six (6) months) the employee will also be required to complete form SF 85, "Questionnaire for Non-Sensitive Positions", and form OF 306,

“Declaration for Federal Employment”. These forms are required for the Governments use in conducting background investigations per Homeland Security Presidential Directive HSPD-12. Copies of these forms are available on the SRNS Internet Home Page at http://www.srs.gov/general/busiops/PMMD/SRNS_general_provisions.htm

- (3) Subcontractor will observe the following badging procedure for processing employees through employment and security orientation:
 - (i) A minimum of two working days prior to the start of the badging and orientation process, subcontractor shall transmit the following information to the STR (or the End User if an STR is not appointed for this order):
 - Subcontract Number
 - Employee name
 - Employee address
 - Employee Social Security Number
 - Employee Date of Birth
 - (ii) Subcontractor employees shall report to SRS Building 703-46A at SRS Road 1, approximately two miles east of SC Highway 125 in Jackson, SC. Employee shall be given a temporary badge for travel to SRS Central Shops Area for Substance Abuse Program (SAP) Testing. (See Article titled “Workplace Substance Abuse Programs.”)
 - (iii) Each employee must successfully pass General Employee Training (GET) prior to undergoing the Photo Badging procedure. See Article titled “General Employee Training and Annual Refresher Training for Subcontract Employees”. GET is given on Monday of each week in the Jackson, SC municipal building, and should be scheduled well in advance of the desired date in order to assure placement.
 - (iv) The orientation and badging process will take approximately four (4) hours.
- (4) The maximum duration that Subcontractor employees will be issued a site access badge is one (1) year. Subcontractor employees requiring a new badge will report to the Badge Office and repeat the badging process.
- (5) If Work under this Subcontract is to be performed in security areas, all personnel

will be required to sign in and out at security gates and are subject to a search of their person and belongings at entrances to or exit from the area.

B. Temporary Badge (typically for visitors and short term personnel).

- (1) Temporary badges are valid for a maximum of 10 calendar days per person in a calendar year. To avoid unnecessary expiration, these badges should be returned to the badge office immediately upon completion of need.
- (2) Two working days prior to the need date, subcontractor shall transmit the following information to the STR/End User:
 - Subcontract Number
 - Employee name
 - Employee address
 - Employee Social Security Number
 - Employee Date of Birth
- (3) The Assigned Competent Person (ACP) (Subcontractor or SRNS employee) shall perform Task Analysis of scope to be performed and identify any applicable contractual task specific checklist(s) from the subcontractors accepted Worker Protection Plan or SRNS’s Focused Observation Database if a WPP is not required by the terms of this order.
- (4) ACP shall provide advance copy of any task specific safety checklist(s) to personnel seeking temporary badges.
- (5) Badge Office provides initial security briefing, issues registration card and obtains acknowledgement signature, issues “maroon” Visitors Badge for duration requested by STR/End User.
- (6) ACP reviews any applicable checklist(s) and performs focused observations as directed by the STR/End User.
- (7) Upon completion of scope, return badge to Badge Office upon exiting SRS.

C. Identity Verification.

- (1) In order to receive a photo or temporary badge for entry to SRS, supplier/subcontractor employees, except delivery personnel (see subparagraph (2) below), will be required to present two specific forms of identification from the “List of Acceptable Documents” (Department of Homeland Security Form I-9, copy available on the SRNS Internet Home Page at http://www.srs.gov/general/busiops/PMMD/SRNS_general_provisions.htm). At least one of the documents selected from the list

must be a valid State or Federal government-issued picture ID. .

- (2) Vendor Delivery Personnel. Unbadged personnel seeking a temporary badge for material/equipment deliveries will be required to present one form of picture identification that will verify their identity, such as a valid state driver's license that includes a photograph. Delivery personnel shall enter the site at the Aiken Barricade located approximately one (1) mile south of SC Highway 278, and will be escorted at all times to the delivery location and back to the entrance barricade by Wackenhut Services, Inc assigned escorts, or by Assigned Competent Persons (SRNS or Subcontractor).

- D. If the Subcontractor or any lower-tier subcontractor should independently suspend or remove an employee from work at the Savannah River Site (SRS) for unsafe acts or behavior, the Subcontractor shall immediately notify the STR/End User, return the employee's badge to the STR/End User, and provide the STR/End User with written notification of the employee's name and reason(s) for such suspension or removal.

(The following Article is applicable only if Software is furnished under this order)

25. SOFTWARE LICENSE

Licensor hereby grants to SRNS a nonexclusive, transferable license to use the Software subject to the following terms, conditions, and restrictions:

- A. The license granted under this agreement authorizes SRNS to unlimited use of the Software in any machine-readable form on the single central processing unit (hereinafter referred to as "CPU"), or multiple central processing units controlled by a single operating system (together referred to as "CPU") designated by type, serial number, and location as follows:

Type _____

Serial No. _____

Location _____

- B. If the CPU designated in paragraph 1.1 becomes inoperative due to malfunction, preventive maintenance, or engineering changes, Software

may be temporarily transferred to a backup CPU until the designated CPU is restored to operative status.

- C. The SRNS acknowledges that Licensor considers Software to contain proprietary data and as such SRNS agrees that, during the term of this agreement and for a period of one year following termination of this agreement, to treat Software with the same degree of caution, care, and confidentiality as it treats its own proprietary information and in accordance with the provisions of this agreement, except that such obligations shall not extend to any information or technical data relating to Software which is now available to the general public or which later becomes available to the general public by acts not attributable to SRNS and its employees. All such proprietary data shall be so identified and marked by Licensor at the time it is conveyed to SRNS. Except as may be required for Licensee's own archival purposes, SRNS shall not knowingly make or allow others to make copies or reproductions of the Software in any form without written consent of Licensor.
- D. Use of Software shall be limited to work under Licensee's contract (#DE-AC09-08SR22470) with the Department of Energy (DOE), and any transfers are limited to DOE or successor contractors.

26. INCORPORATION BY REFERENCE

This Agreement/Subcontract incorporates certain clauses by reference. These clauses apply as if they were incorporated in their entirety. For Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) provisions incorporated by reference, "Contractor" means Seller and "Contracting Officer" means the Company Procurement Representative. Government means the Company (except in instances when it is not applicable or appropriate).

The following clauses are incorporated by reference:

- (1) FAR 52.222-26, Equal Opportunity (APR 2002)
- (2) FAR 52.222-35, Equal Opportunity for Disabled Veterans Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001)
- (3) FAR 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998)
- (4) DEAR 952.250-70, Nuclear Hazards Indemnity Agreement (OCT 2005)

- (5) FAR 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201)
(This Clause is applicable if Order exceeds \$100,000)

FAR clauses may be accessed electronically at <http://www.arnet.gov/far>. DEAR clauses can be found at <http://professionals.pr.doe.gov>.

27. **AMERICAN RECOVERY and REINVESTMENT ACT OF 2009, Pub.L. 111-5, (Recovery Act or Act)**

The following terms are applicable if performance of this Order will require the Supplier/Subcontractor's employee(s) to perform work under the American Recovery and Reinvestment Act of 2009, Pub. L. 111- 5, (Recovery Act or Act.)

A. Segregation and Payment of Costs

Subcontractor must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects. Where Recovery Act funds are authorized to be used in conjunction with other funding to complete projects, tracking and reporting must be separate from the original funding source to meet the reporting requirements of the Recovery Act and OMB Guidance.

Invoices must clearly indicate the portion of the requested payment that is for work funded by the Recovery Act.

B. Prohibition on Use of Funds

None of the funds provided under this subcontract derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

C. Wage Rates

All laborers and mechanics employed by subcontractors and sub-tier subcontractors on projects funded directly by or assisted in whole or in part by

and through the Federal Government pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See <http://www.dol.gov/esa/whd/contracts/dbra.htm>.

D. Publication

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board (the Board). The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

E. Registration requirements

Subcontractors must have a DUNS number and be registered in the Central Contractor Registration (CCR) no later than the need date.

F. Utilization of Small Business

Subcontractor shall to the maximum extent practicable give a preference to small business in the award of sub-tier subcontracts for projects funded by Recovery Act dollars.

G. American Recovery and Reinvestment Act-Reporting Requirements

- A. The following Federal Acquisition Regulation (FAR) clauses are incorporated into the contract by reference:

FAR 52.225-21	Required Use of American Iron, Steel, and Manufactured Goods-Buy American Act—Construction Materials (Mar 2009)
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FAR 52.225-22	Notice of Required use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials (Mar 2009)	SRNS a signed acknowledgement and waiver of any SRNS salary and benefits programs in a form satisfactory to SRNS, whereby the subcontractor employee agrees and understands that (s)he is an employee of the Supplier/ Subcontractor, and not of Savannah River Nuclear Solutions (SRNS) or the United States Department of Energy, that the employee will receive all compensation (salary and benefits) from Supplier/Subcontractor and will not be eligible for any salary or benefits programs provided by SRNS , including but not limited to base salary, health and welfare plans, pension plans, and 401(k) investment savings programs.
FAR 52.225-23	Required Use of American Iron, Steel, and Other Manufactured Goods-Buy American Act—Construction Materials under Trade Agreement (Mar 2009)	
FAR 52.225-24	Notice of Required use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials under Trade Agreement (Mar 2009)	<u>A.29 COMPLIANCE WITH DIESEL EMISSION REDUCTION ACT (DERA)</u> All diesel powered equipment bought on-site for ARRA work is required to burn ultra-low sulfur diesel fuel (≤ 15 ppm). Fuel certification will be available for inspection upon request.
FAR 52.203-15	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Mar 2009)	All pre-1996 model year non-road diesel engine equipment brought on-site for ARRA work shall be retrofitted with EPA verified control equipment. Equipment certification will be submitted prior to commencement of work.
FAR 52.204-11	American Recovery and Reinvestment Act—Reporting Requirements (Mar 2009)	SRS is implementing South Carolina State Transport Police (SCSTP) maximum idling regulation SCCL§56-35-10. All motor vehicles and heavy equipment shall be shut down if the idling period will exceed 10 consecutive minutes. Additional guidance on maximum idling time can be obtained at www.scastp.org .
FAR 52.212-5 (Alternate II)	Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Mar 2009)	
FAR 52.214-26 (Alternate I)	Audit and Records—Sealed Bidding (Mar 2009)	
FAR 52.215-2 (Alternate I)	Audit and Records—Negotiation (Mar 2009)	

B. All other terms and conditions remain unchanged.

**28. WAIVER OF BENEFITS
(STAFF AUGMENTATION SUBCONTRACTS ONLY)**

Prior to performance, the Subcontractor shall obtain from each subcontractor employee and submit to